

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WANDA JEAN DARROW and DONNA KAY  
HANNAHS,

UNPUBLISHED  
October 8, 2009

Plaintiffs-Appellees,

v

No. 283325  
Eaton Circuit Court  
LC No. 06-001410-CZ

MAYOR OF POTTERVILLE JULIA NELSON,

Defendant-Appellant,

and

CITY OF POTTERVILLE, POTTERVILLE CITY  
COUNCIL, LARISSA BALLARD, JOHN  
FLOCKER, LISA LAMANSKI, LARRY  
MENDERINK, JOHN TISDALE, JACOB  
ROBERTSON, and POTTERVILLE CITY  
MANAGER TIMOTHY SADOWSKI,

Defendants.

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Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

Defendant-appellant Nelson appeals by right the circuit court's order denying in part defendants' motion for summary disposition.<sup>1</sup> The circuit court rejected Nelson's assertion that plaintiff Hannahs's claim for defamation should be dismissed on the ground of governmental immunity. See MCR 2.116(C)(7). We reverse and remand for entry of final judgment in favor of defendant Nelson.

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<sup>1</sup> Aside from the defamation claim against Nelson, all other claims in this case were disposed of in favor of defendants. The defamation claim was stayed pending this appeal. See MCR 7.209(E)(4); *Costa v Community Emergency Med Services, Inc*, 475 Mich 403, 413-414; 716 NW2d 236 (2006).

Hannahs worked as the deputy city treasurer of the city of Potterville. Hannahs and plaintiff Darrow, the city treasurer, brought to the attention of the city council and the Michigan State Police serious charges concerning the city's bookkeeping practices and the conduct of the city manager. In the course of the city council's investigation of these charges, the council held a closed meeting that was not supposed to be disclosed. During the time period at issue in this case, Nelson was the city's mayor and a member of the city council, and was involved in investigating Hannahs's and Darrow's concerns.

One workday morning after the investigation was initiated, Darrow called Nelson upset about receiving a letter from the city manager taped to her door. The treasurer asked for a special meeting of the council, but Nelson denied this request. About 15 minutes later, Nelson went to city hall. At some point, Nelson confronted Hannahs about the possibility that she disclosed to a former city employee that the closed council meeting was held. When Hannahs denied the allegation, Nelson reportedly called her a "liar." It is this comment that underlies Hannahs's defamation claim. Hannahs was fired by the city manager after the city's investigation disclosed no wrongdoing on the part of the manager. The city manager asserted that Hannahs was fired for falsifying a document.

Nelson argues on appeal that Hannahs's defamation claim should have been dismissed on the basis of governmental immunity. We agree. Nelson also argues that Hannahs could not prove the elements of her defamation claim. Because we find that Hannahs's defamation claim was barred by governmental immunity, it is unnecessary to reach Nelson's second argument.

A circuit court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 52; 684 NW2d 320 (2004). The applicability of governmental immunity is a question of law that is also reviewed de novo. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

Governmental immunity is a characteristic of government, and plaintiffs bringing suit against the government must plead in avoidance of governmental immunity. *Odom v Wayne Co.*, 482 Mich 459, 478-479; 760 NW2d 217 (2008). However, the immunity of an individual government employee is an affirmative defense that the employee must raise and prove. *Id.* at 479. Governmental immunity from tort liability is governed by MCL 691.1407. Of particular relevance in this case, MCL 691.1407(5) provides:

A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Nelson argues that as the mayor and a member of the city council, she was acting both as the highest elected official of the city and as a legislator when she made the challenged remark. The circuit court made no findings as to Nelson's specific role at the time, simply ruling that there was a question of fact concerning whether Nelson was acting as the mayor or as a city council member.

According to the Potterville city charter, city council members are elected, and the city's mayor is a council member who is elected by the city council. Potterville Charter, §§ 3.01(a);

3.03. The mayor presides over council meetings and is recognized as the head of the city government, even though she has no particular administrative duties. Potterville Charter, § 3.03. The city council is vested with all powers of the city and may exercise these powers in performing all duties and obligations of the city according to law. Potterville Charter, § 3.04. This power includes adopting ordinances, adopting and amending budgets, assessing taxes, and supervising utilities and public roads. Potterville Charter, §§ 3.13; 6.05; 6.10; 11.01; 12.01. It is clear that Nelson’s role within the Potterville city government fell within the scope of MCL 691.1407(5), regardless of whether she was acting as the mayor or as a city council member at the time. See *Bennett v Detroit Police Chief*, 274 Mich App 307, 319; 732 NW2d 164 (2006); see also *Gora v Ferndale*, 456 Mich 704, 720; 576 NW2d 141 (1998) (observing that city council members hold “legislative office”).

Of course, legislative officials and the highest executive officials of local government are not immune from tort liability unless their acts fall within the scope of their legislative or executive authority. MCL 691.1407(5); *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988). We acknowledge that the circuit court did not determine whether Nelson was acting within her legislative or executive authority when the challenged remark was made. Whether an official of local government was acting within her authority depends on a number of factors, including the nature of the acts, the position held by the official, the local law defining her authority, and the structure and allocation of powers at that particular level of government. *Marrocco*, 431 Mich at 711; *Bennett*, 274 Mich App at 312. According to the Potterville city charter, a member of the city council is not permitted to interfere with the administration of the city and is expressly prohibited from directing city employees except through the city manager. Potterville Charter, § 3.05(c). Likewise, the mayor has no particular administrative duties. Potterville Charter, § 3.03. However, a member of the city council is expressly authorized to interact with city employees for the purposes of inquires and investigations under another section that authorizes the council to investigate the affairs of the city and the conduct of any department. Potterville Charter, §§ 3.05(c); 3.09.

The city council voted to investigate allegations of financial mismanagement and inappropriate conduct against the city manager. As the mayor and a city council member, Nelson was on the subcommittee charged with this responsibility, and Nelson’s cited exchange with Hannahs directly involved an issue related to this investigation. There was no evidence presented that Nelson was attempting to administer city employees or direct the operations of its employees when making the remark. Accordingly, we conclude that Nelson’s remark, regardless of its motivation, was made within the scope of her investigative authority and was therefore subject to immunity. MCL 691.1407(5).

Reversed and remanded for entry of judgment in favor of defendant Nelson consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood  
/s/ Elizabeth L. Gleicher